



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
TAYLOR UNIVERSITY**

WILLIE EATON v. STATE OF INDIANA

Appeal from:
Wayne Circuit Court
The Honorable David Kolger,
Judge

Oral Argument:
Thursday, December 6, 2007
12:30—1:30 p.m.
30 minutes each side

**CRIMINAL LAW
SEARCH AND SEIZURE**

Did the State provide the facts necessary to enable the court to find probable cause to issue a search warrant for Willie Eaton's residence?

CASE SYNOPSIS

Facts and Procedural History

On May 4, 2005, Indiana State Police Officer Wildauer stopped a vehicle, driven by Edgar Gonzalez, for speeding and upon obtaining consent, searched the vehicle. In a hidden compartment, Wildauer found four (4) kilograms of cocaine. Gonzalez agreed to assist the police and cooperated. The police placed a GPS tracking device, an audio recording device, and three kilograms of fake cocaine and left one kilogram of real cocaine. The police also replaced a tire to provide an excuse for the delay.

Upon arriving in Richmond, Indiana, Gonzalez spoke with a male who directed him to a nearby Pizza King to wait for him. A male arrived driving a tan Chevrolet Blazer. Gonzalez followed the male to and pulled into the service bays at a Discount Muffler located in Richmond. During this time, the police had Gonzalez under surveillance. The officer saw

Dewayne Eaton, known from prior drug investigations, exit the tan Blazer. Gonzalez's vehicle was moved into the garage to fix the flat tire. Shortly thereafter, Willie Eaton arrived at the garage and after speaking with Gonzalez and Dewayne Eaton, he pulled his vehicle into the service bay. Willie Eaton asked if work could be done on his tires. At some point, Willie Eaton was taken to the waiting room which left Gonzalez and Dewayne Eaton alone in the garage area. Officers heard someone attempting to open the hidden compartment in Gonzalez's car where the drugs were located and rushed in to secure the scene. The officers arrested Dewayne as he attempted to flee through the back door of the shop. The officers also arrested Eaton in the waiting room. On the front seat of Gonzalez's vehicle was a bag containing approximately \$84,000.

While Dewayne gave officers consent to search his residence, Eaton did not consent. ISP Officer Ron Shoemaker, who arrested Eaton, filed an affidavit in support of a search warrant request for Eaton's residence. Officers executed

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the first warrant and saw “(1) [a] purple Crown Royal bag containing a substance similar in texture and color to cocaine; (2) digital scales; (3) [a] sawed[-]off shot-gun and ‘long guns’; (4) U.S. currency; [and] (5) [a]dditional quantity of substance similar in texture and color to cocaine.” Based on these observations, officers obtained a second search warrant and the officers seized the above items.

On May 6, 2005, the State charged Eaton with Class A felony conspiracy to deal in cocaine; Class A felony dealing in cocaine; Class B felony possession of a firearm by a serious violent felon; and Class A misdemeanor possession of marijuana. The State dismissed the Class B Felony serious violent felon in possession of a firearm. At the jury trial, the State presented, over Eaton’s objections, evidence of the items seized pursuant to the second search warrant. The State also presented evidence of Gonzalez’ and Dewayne’s actions on the day in question, the observations of the various officers, and the amount of cash and cocaine recovered at the garage.

Eaton moved for a directed verdict on all counts. The court granted Eaton’s motion on the conspiracy charge but denied his motion on the remaining two charges. The jury found Eaton guilty on those remaining charges, and the court sentenced Eaton to a total of twenty-five years in the Department of Correction with five years suspended. Eaton appeals his conviction and sentence.

Parties’ Arguments

Under Indiana Code section 35-33-5-1, a court may not issue a search warrant without probable cause. Probable cause exists if “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Love v. State, 842 N.E.2d 420, 425-26 (Ind. Ct. App. 2006) (quoting Merritt v. State 803 N.E.2d 257, 260 (Ind. Ct. App. 2004)). The decision to issue a search warrant is based upon the facts presented in the supporting

affidavit and the rational and reasonable inferences drawn therefrom. Leicht v. State, 798 N.E.2d 204, 207 (Ind. Ct. App. 2003), trans. denied.

Eaton argues that the State’s supporting affidavit did not set forth facts constituting probable cause to search Eaton’s residence. Eaton notes that in the affidavit the State did not show that Eaton committed or attempted to commit a criminal activity. It merely notes that Eaton happened to be in the shop at the same time as Gonzalez and Dewayne. The State argues that Eaton’s association with the other two individuals, Eaton’s car in one of the bays near the cocaine, and Eaton’s arrival at the shop would allow the court to reasonably infer that Eaton was involved in the drug transaction.

Eaton also asserts that the good faith exception to the exclusionary rule cannot save the first warrant. This means that evidence which is seized pursuant to a invalid search warrant may be admissible if the officers executing the warrant acted reasonably believed the contents of the warrant to be valid. Eaton states that there is insufficient information to allow the court to issue the warrant and that the State omitted relevant facts without which the court could not accurately determine if probable cause existed. The State argues that the facts omitted were not omitted intentionally and that the affidavit fits within the good faith exception.

Eaton argues that if the warrant is invalid then any evidence seized as a result of that warrant should be inadmissible at trial. The State believes that the warrants were valid and that any evidence seized is admissible at trial due to the lawful entrance of the officers into the home and the observation of the evidence in plain view.

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989
- Chief Judge since March 2007

John G. Baker is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and since 2004 at the School of

Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker was retained on the Court by election in 1992 and 2002. He and his wife have five children and — so far — four grandchildren.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

Today's oral argument is the 200th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. James S. Kirsch (Marion County)

- Judge of the Court of Appeals since March 1994

James S. Kirsch was appointed to the Court of Appeals in March 1994 and served as Chief Judge from March 1, 2004 to February 28, 2007. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

Judge Kirsch served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and is a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis. He is a past-president of the United Way/Community Service Council Board of Directors and a current or

former member of the Board of Directors of the United Way of Central Indiana, of the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation.

Judge Kirsch is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife have two children. He was retained on the Court in 1996 and 2006.

The 15 judges of the Indiana Court of Appeals issue more than 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Paul D. Mathias (Allen County)

- Judge of the Court of Appeals since March 2000



Paul D. Mathias was appointed to the Court by Governor Frank O'Bannon in March, 2000. Judge Mathias is a fifth generation Hoosier and grew up in Fort Wayne. He graduated from Harvard University, *cum laude*, in 1976 and from Indiana University School of Law – Bloomington in 1979, where he was a member of the law school's Sherman Minton Moot Court Team and *Order of Barrister*.

Judge Mathias practiced law for six years in Fort Wayne, concentrating in construction law, personal injury and appellate practice. In 1985, he was appointed Referee of the Allen County Small Claims Court,

where he served until his appointment as Judge of the Allen Superior Court – Civil Division by Governor Evan Bayh in 1989.

Judge Mathias served as an officer of the Indiana Judges Association from 1993 to 1999 and as its president from 1997 to 1999. He received the Centennial Service Award from the Indiana State Bar Association in 1996, and a Sagamore of the Wabash Award from two governors.

Judge Mathias, who was retained on the Court of Appeals by election in 2002, is married and has two sons.

ATTORNEYS FOR THE PARTIES

For Appellant, Willie Eaton:

David Jordan

Lafuze, Jordan & Cox

Richmond, Indiana

David M. Jordan was born in Muncie in 1974. In 1978, he moved to Liberty, Indiana with his parents Ron and Susan. Ron Jordan has been the Prosecuting Attorney in Union County for nearly 25 years and Susan Jordan was a school teacher.

Following graduation, Mr. Jordan attended Indiana University—Bloomington where he majored in Political Science and Criminal Justice and minored in Psychology. He attended New York Law School in Manhattan and earned his degree from Indiana University Law School in Bloomington.

Mr. Jordan was admitted to practice law in 2001, and thereafter formed the law firm of Lafuze, Jordan & Cox. He concentrates primarily on criminal defense.

Mr. Jordan's family consists of his girlfriend, Angie, their baby, Brooklyn, born August 5th, Angie's two children, Hunter and Clay, and four dogs.

Eaton v. State is only the second appeal Mr. Jordan has written. This will be his first oral argument.



For Appellee, State of Indiana:

Scott Barnhart

Deputy Attorney General

Indianapolis

Scott Barnhart was born in Evansville and grew up in Newburgh. Mr. Barnhart attended the Indiana University Kelley School of Business and received his B.S. with majors in Operations Management and Management. Following college, he spent a year working in the Americorps Service Program. As an Americorps Volunteer, his service primarily involved working with residents of a local housing authority and various educational programs for children.

Mr. Barnhart enrolled at the

University of Toledo, College of Law. While attending law school, he served as a law clerk or legal intern for the Office of the Indiana Attorney General, the Wood County, Ohio, Prosecutor, and the Ohio Sixth District Court of Appeals. Mr. Barnhart graduated with Honors from the College of Law, passed the Indiana bar exam, and accepted a position as a Deputy Attorney General (DAG) in the appeals division. His primary responsibilities as a DAG include non-capital criminal appellate litigation in the Indiana Court of Appeals and the Indiana Supreme Court.